

Original filed 8/31/06

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DENNIS DAVID OLECIK,)	No. C 06-0745 JF (PR)
)	
Petitioner,)	ORDER OF DISMISSAL
)	
vs.)	
)	
JEANNE S. WOODFORD, Warden,)	
)	
Respondent.)	

Petitioner, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. 2254. Petitioner has paid the filing fee. Petitioner filed an earlier habeas action with this Court, in C 98-21029 JF (PR), challenging the same conviction and sentence raised in the instant petition. The Court denied Petitioner's earlier petition on the merits on May 25, 2000. The Court of Appeals denied Petitioner's appeal in December 2000. Because the instant petition challenges the same conviction and sentence as Petitioner's earlier habeas action, the Court will DISMISS the instant petition without prejudice as a second or successive petition pursuant to 28 U.S.C. § 2244(b).

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DISCUSSION

A district court must dismiss claims presented in a second or successive habeas petition challenging the same conviction and sentence unless the claims presented in the previous petition were denied for failure to exhaust. See 28 U.S.C. § 2244(b)(1); Babbitt v. Woodford, 177 F.3d 744, 745-46 (9th Cir. 1999). Additionally, a district court must dismiss any new claims raised in a successive petition unless the petitioner received an order from the court of appeals authorizing the district court to consider the petition. See 28 U.S.C. § 2244(b)(2), (3).

Here, Petitioner raises two new claims regarding the statute of limitations and a violation of his right to confrontation pursuant to Crawford v. Washington, 541 U.S. 36 (2004). See Petition at 8. The instant petition challenges the same conviction and sentence as the earlier petition in case no. C 98-21029 JF (PR), this earlier habeas petition was denied on the merits, and Petitioner has not presented an order from the Court of Appeals authorizing this Court to consider any new claims. Accordingly, this Court must dismiss the instant petition in its entirety. See 28 U.S.C. § 2244(b)(3)(A).

CONCLUSION

The instant petition is DISMISSED without prejudice as a second and successive petition pursuant to 28 U.S.C. § 2244(b)(2). The Clerk shall terminate any pending motions and close the file.

IT IS SO ORDERED.

DATED: 8/31/06


JEREMY FOGEL
United States District Judge

1 A copy of this ruling was mailed to the following:

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